REMARKS

Claims 1-225 are pending in application. Claims 2-9, 11-22, 24-29, 35-75, 77-121, 123-128, 130-141, 143-148, 154-182 and 185-225 have previously been withdrawn from consideration pending the finding of an allowable generic claim.

The Examiner issued a non-final office action on June 7, 2006. In this office action, claims 1, 10, 23, 30-34, 76, 122, 129, 142, 149-153, 183 and 184 were rejected by the Examiner. This communication is in response to the Examiner's non-final office action.

Claim Rejections Under 35 U.S.C. §102

Claims 1, 10, 23, 30-34, 122, 129, 142 and 149-153 were rejected as being anticipated by August et al. (US 2002/0143638). August et al. purports to disclose a method and apparatus for providing a wireless system for placing orders at a vendor transaction facility, such as a fast food restaurant, where a local temporary communications link is established between a personal communications device carried by a customer and a vendor transaction facility and customer ordering is done over the communications link before the customer reaches the vendor facility, whereby only order fulfillment is necessary when the customer reaches the vendor facility.

Rejection of Claim 1

The Examiner's rejection of claim 1 states that August et al. discloses an order optimization system, comprising: a device, said device being capable of communicating with an establishment computer and transmitting an order to said establishment computer (Fig. 1, item 11), said establishment computer having software enabled means for receiving said order (Fig. 1, item 17), assigning resources to said order (Fig. 6, item 143), and commanding fulfillment of said order (Fig. 6).

Applicant respectfully disagrees with the Examiner's reading of August et al. Specifically, Applicant submits August et al. fails to show, teach, or suggest the assignment of resources to an order. Fig. 6, item 143 of August et al. reads, "Send Order to Fulfillment." The only mention of item 143 in the specification of August et al. is in paragraph 39 and reads, "Assuming that the inventory is sufficient to fulfill the order,

control circuit 17 then sends the order to the fulfillment station 19 in processing segment 143..." In other words, Fig. 6, 143 is simply an instruction for some unidentified employee at fulfillment station 19 to make the order. In August et al. there is no identification of a resource and assignment of that resource to an order. In order for August et al. to work, there must be an assumption that there is an employee at fulfillment station 19 ready to fulfill the order or that an employee at fulfillment station 19 will fulfill the order when the order comes up in the queue. This required assumption demonstrates the non-optimized and traditional order fulfillment nature of the processes in August et al.

In contrast, the present invention assigns a particular resource to a particular order. As described in the present application at, *inter alia*, paragraph 58, "Order Matching Agent 220 performs the function of associating orders (or components thereof) with resources that are predicted to become available based on optimization rules, which may be preprogrammed by the establishment and/or the service provider." This assignment of resources to orders permits the optimization of resources and order throughput, which is lacking in August et al.

Accordingly, August et al. fails to show, teach or suggest all of the elements of Applicants invention as claimed in Claim 1. Therefore Applicant respectfully requests the Examiner to withdraw the rejection of Claim 1.

Rejection of Claims 10, 23 and 30

Claims 10, 23 and 30 depend from and further limit claim 1. For the reasons stated above with respect to claim 1, the rejection of claims 10, 23, and 30 should also be withdrawn.

Rejection of Claims 31-34

Claims 31-34 depend from and further limit claim 1. For the reasons stated above with respect to claim 1, the rejection of claims 31-34 should be also be withdrawn. Furthermore, August et al. fails to show, teach or suggest all of the elements of these claims. Specifically, August et al fails to show, teach or suggest determining the availability of at least one limiting resource necessary to fulfill the order.

In the rejection of claim 31, the Examiner cites Fig. 6, item 141 as showing "software enabled means for determining the availability of at least one limiting resource necessary to fulfill said order," as claimed by Applicant in claim 31. Fig. 6, item 141 of August et al. reads, "Check Inventory." Fig 6, item 141 of August et al. is explained at paragraph 36 of the August et al application, which reads, "… as an adjunct to totaling the order, the control circuit 17 also performs an inventory check in processing segment 141." August et al. goes on to explain that an order will only be totaled if sufficient inventory exists to process the order and that if inventory is insufficient a supervisor may be notified. From this explanation, the inventory check performed, if it is performed, in August et al. is a condition precedent to order fulfillment.

In contrast, the present invention determines which resource or resources from the set of resources necessary to complete an order will limit the throughput of orders. As explained at least in paragraphs 54-67, the present invention applies optimization rules to the available resources to optimize order throughput, or other variable as needed. The identification of limiting resources is part of the optimization process.

Accordingly, August et al. fails to show, teach or suggest all of the elements of Applicants invention as claimed in Claim 31. Therefore Applicant respectfully requests the Examiner to withdraw the rejection of Claim 31. Claims 32-34 depend from and further limit claim 31. For the reasons stated above with respect to claim 31, the rejection of claims 32-34 should also be withdrawn.

Rejection of Claims 122, 129, 142 and 149-153

These claims are considered parallel claims to claims 1, 10, 23 and 30-34. For the reasons stated above with respect to claims 1, 10, 23 and 30-34, the rejection of claims 122, 129, 142 and 149-153 should also be withdrawn.

Claim Rejections Under 35 U.S.C. §103

Claims 76, 183 and 184 were rejected as being unpatentable over August et al. in view of McDonald, Jr. et al. (US 2002/0077750) and further in view of Borton (US 2002/0188492). The August et al. disclosure is discussed above. McDonald, Jr. et al. purports to disclose a method and apparatus for providing automatic status information

pertaining to the location and delivery state of a plurality of delivery vehicles that incorporates the use of an intelligent controller onboard the delivery vehicle. Borton purports to disclose a system and method for strategically making, delivery, and carry-out of food orders for use by a store in the business of making, delivering, and permitting carry-out of food such that the food is optimally fresh upon delivery to and carry-out by customers of the store.

Rejection of Claim 76

The Examiner's rejection of claim 76 states August et al. teaches providing information about the completion and availability of orders (August et al., Fig. 10), but does not specifically mention that this information along with assigned, unassigned and reassigned information is provided to a delivery driver. The Examiner goes on to state that McDonald, Jr. et al. teaches providing status information to delivery drivers. (McDonald, Jr. et al., Fig. 3). The Examiner claims it would have been obvious to a person having ordinary skill in the art at the time of the present invention to include in August providing scheduling information to the drivers because displaying this information to assigned drivers would prevent the driver leaving the store without all the required deliveries (Borton, page 1, paragraph 0012).

As claim 76 depends from and further limits claim 1. For at least the reasons stated above with respect to claim 1, specifically regarding the assignment or resources to an order, the rejection of claim 76 should also be withdrawn.

Fig. 3 of McDonald, Jr. et al. is described as showing a mobile data unit. The mobile data unit includes, *inter alia*, a wireless transmitter/receiver, a GPS receiver, a controller, a display unit, a data entry device, and vehicle sensors (McDonald, Jr. et al., paragraph 0030). Messages entered on a data entry device of a central dispatch center can be displayed on the display unit of the mobile data unit (McDonald, Jr, et al., paragraph 0034).

While the mobile data unit as described in McDonald, Jr. et al., could be used to inform delivery drivers of assigned, un-assigned and re-assigned orders to a delivery driver, there is no indication, teaching, or suggestion, or showing that the mobile data unit is so used. In fact, the primary purpose of the mobile data unit is to send messages to a

dispatcher regarding the state of a delivery vehicle. According to McDonald, Jr. et al., once an initial assignment of a job is made, no communication from the central dispatch center to the truck is required because the mobile data unit informs for the central dispatch center of changes in the delivery state.

In contrast to the system disclosed in McDonald, Jr. et al, the present invention uses the ability to dynamically assign, un-assign, and re-assign orders to a particular delivery driver as part of commanding the fulfillment of an order. This ability is discussed in general in Applicant's specification at paragraphs 133 through 142, and more specifically at paragraph 136.

Paragraph 0012 of Burton reads, "Furthermore, by reminding drivers that an order needs beverages by displaying that information on a dispatch screen, fewer return trips to the store by the drivers would be made to pick-up forgotten beverages, thereby also saving labor. Moreover, there would also be fewer canceled beverage orders from customers who no longer want the untimely pop delivery, thus increasing beverage sales."

While the above referenced passage does address informing a delivery driver of what items are included in an order, Applicant respectfully submits the above referenced passage does not provide motivation to combine the sited references to result in a system where commanding fulfillment of an order includes notifying the delivery driver of assigned, un-assigned, and re-assigned orders. As mentioned above and discussed in Applicant's specification at paragraphs 133-142, the assignment, un-assignment, and re-assignment of orders to delivery drivers enhances delivery team efficiency. There is a significant difference in reminding a driver of what items are in an order and optimizing driving assignments.

Rejection of Claims 183 and 184

These claims are considered parallel claims to claim 76. For the reasons stated above with respect to claim 76, the rejection of claims 183 and 184 should also be withdrawn.

Conclusion

In view of the above Remarks, Applicant submits that the present application is in condition for allowance, and seeks early indication of the same. If the Examiner requires further information with respect to this application, the Examiner is invited to contact Applicant's attorney at (847) 537-3537 for a telephonic interview.

Respectfully submitted,

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